

### **REMARKS**

This application is a divisional of U.S. Application Serial No. 09/038,380, now U.S. Patent No. 6,286,005. Claims 15-22, 96, 97, and 101-121 are currently pending in the application. Claims 101-117 and 121 have been withdrawn and claims 15-22, 96, 97, and 118-120 have been rejected. Claims 1-14, 23-95, and 98-100 have been canceled. Claim 121 has been newly withdrawn by the Examiner. Applicant traverses this constructive election.

Applicant notes that both the Disposition of Claims in the Office Action Summary and the status of claims on page 2 of the Detailed Action are incorrect. Additionally, claims 119 and 120 have not been rejected over prior art and therefore must contain allowable subject matter. Confirmation is requested. Applicant requests reconsideration of the application in light of the following remarks.

#### **Telephone Interview**

Applicant's attorney, Lori Cuomo, wishes to thank the Examiner for his courtesy and time during a telephone interview that was held on January 23, 2007, at which time the non-statutory subject matter and art rejections were discussed. The Interview Summary mailed January 30, 2007, reflects the discussion of non-statutory subject matter.

#### **Rejections under 35 U.S.C. § 101**

Claims 15-22, 96-97, and 101-120 have been rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Applicant strongly disagrees. In Addition, Applicant notes that claims 101-117 have been withdrawn.

It is unclear to Applicant how the Examiner, after 7 office actions starting in the year 2002, can now, for the first time, reject the instant claims based on non-statutory subject

matter. The Examiner states that a program product is not statutory. A quick search of issued patents on February 2, 2007, finds the term “program product” in the claims 15201 times and the terms “program product” in conjunction with “signal bearing media” in the claims of issued patents 475 times.

A program product recorded on signal bearing media most certainly constitutes statutory subject matter. A manufacture may be defined as a memory and/or computer-readable medium having instructions stored in or on it for causing steps to be performed when the instructions are executed. The present claims read on a manufacture. Applicant respectfully requests the above rejection based on non-statutory subject matter be withdrawn.

### **Rejection under 35 U.S.C. §103**

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the Applicant’s disclosure. A failure to meet any one of these criteria is a failure to establish a *prima facie* case of obviousness. MPEP §2143.

### **Claims**

Claims 15-22, 96-97, and 118 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Hendricks, et al. (U.S. Patent No. 6,463,585, hereinafter “Hendricks”), in view of Wachob (U.S. Patent No. 5,155,591, hereinafter “Wachob”). Applicant respectfully traverses this rejection and request reconsideration of the claims.

The present invention relates to the field of computer-assisted data manipulation and analysis. More particularly, the present invention relates to methods and techniques for quickly and efficiently accessing and sorting large quantities of demographic data and media access information for various decision-making purposes, especially advertising.

The Examiner states on page 8 of the last Office Action that the features which Applicant relies are not recited in the rejected claims. This is clearly untrue. Independent claim 15 (previously presented) recites “A program product comprising:

an advertising plan optimization mechanism that creates an advertising plan, wherein:

the advertising plan optimization mechanism schedules a distribution of an advertising message on one or more broadcast or other shared media vehicles for exposure to potential customers, wherein the potential customers receive the same advertising message,

the advertising plan optimization mechanism creates or modifies the advertising plan by modifying the distribution of the advertising message within an advertising schedule and evaluating a resulting advertising plan to achieve one of an improved and an optimal advertising plan for the message; and

signal bearing media bearing the advertising optimization mechanism.”

The underlined term “an” is used before “advertising schedule” for antecedent basis reasons. The overall advertising plan after modifying clearly refers to “evaluating a resulting advertising plan” in independent claim 15 (previously presented). The Examiner appears to be confusing antecedent basis issues with the subject matter as claimed.

Column 4, lines 29-32 of Hendricks describes a program channel which carries a main program, such as a broadcast television show and advertisements. Hendricks does not teach or suggest the program product and/or advertising plan, as recited in independent claim 15 (previously presented). Again in column 39, lines 50-57 of Hendricks, the program refers to a television show, not a program for data analysis. In column 39, lines 50-57 of Hendricks, the feeder channels are used for the programs, i.e. television shows that yield the largest maximum rank. Columns 27 and 28 of Hendricks do nothing to show modifying and/or evaluating, as recited in independent claim 15 (previously presented). Previously presented

claims 16-19, 21, 22, 96, 97, and 118, and original claim 20, all depend from independent claim 15 (previously presented).

The Examiner asserts that Hendricks has “a program product” and refers to column 4, lines 29-32. However, the “program” referred to in these lines is not a “program product.” Rather column 4, lines 29-32 refer to television “programming” with a main “program channel” and a number of feeder channels. Therefore, it is impossible for any “program product” of column 4, lines 29-32 to be a “program product” comprising “an advertising plan optimization mechanism,” as recited in claim 15 (previously presented). That is, the television programs and television channels carrying programming as described in column 4, lines 29-32 of Hendricks do not comprise “an advertising plan optimization mechanism.”

Claim 15 (previously presented) recites that the “advertising plan optimization mechanism schedules a distribution of an advertising message.” Hendricks does not deal with “scheduling a distribution of an advertising message” in the same way as does the present invention. Rather, Hendricks targets individuals or demographic groups and inserts advertising messages based on feedback from individual television terminals. Therefore, Hendricks does not modify the advertising plan by “modifying the distribution of the advertising message within the advertising schedule,” and “evaluating a resulting advertising plan to achieve one of an improved and an optimal advertising plan for the message.” Claim 15 (previously presented) recites modification of the distribution of the advertising message and evaluation of the overall plan for the advertising message. This is not taught or suggested by Hendricks or the secondary reference Wachob, discussed below.

Even if Hendricks can be considered to include scheduling of an advertising message, Hendricks does not have any evaluation of a resulting advertising plan. Any scheduling is done and modified on a terminal-by-terminal basis so that the “blindness is on” as to the other individual terminals within a selected group. This does not teach or suggest the step of “evaluating a resulting advertising plan to achieve one of an improved and an optimal advertising plan for the message, as recited in claim 15 (previously presented).

It should be noted that Hendricks teaches the use of a default program advertisement and selective replacement of the default advertisement by one of a plurality of advertisements on a number of feeder channels. Thus, Hendricks seeks to take multiple

advertisements and to place the multiple advertisements on optimal television terminals. Conversely, the presently claimed invention seeks to determine an optimal television network or other media vehicle by which a particular advertising message will be exposed to potential customers. Thus, Hendricks also falls short of claim 15 (previously presented) language “schedules a distribution of an advertising message on one or more broadcast or other shared media vehicles.”

Further, Applicant agrees the claims must be read in light of the specification which describes the computer- assisted data manipulation and analysis. The Examiner is clearly not reading the term “program product” in light of the specification.

Wachob fails to overcome the deficiencies of the primary reference, Hendricks. Wachob appears to be relied on for the teaching in column 2, lines 24-36. Column 2, lines 24-36 of Wachob appear to be describing a data signal to switch from a television program channel to a commercial channel. Again, there is no teaching or suggestion of modifying and/or evaluating. There is no disclosure of signal bearing media bearing an advertising optimization mechanism, as recited in independent claim 15 (previously presented).

The Examiner explicitly states on page 5 of the last Office Action that Hendricks does not disclose signal bearing media, yet the Examiner relies on column 9, lines 34-46 of Hendricks to teach signal bearing media comprises transmission media, as recited in claim 16 (previously presented). This does not make sense. The same argument applies to claim 17 (previously presented), which recites the signal bearing media comprises transmission media. The Examiner next relies on column 28, lines 52-67 of Hendricks to teach signal bearing media comprises recordable media. Hendricks does not disclose signal bearing media, as recited in claims 15 (previously presented)-17 (previously presented).

Claim 18 (previously presented), is also not taught or suggested by Hendricks. In particular, the Examiner refers to column 20, lines 43-66 as a basis for rejecting the recitation of “iteratively modify the advertising plan.” Firstly, the advertising plan recited in base claim 15 (previously presented) is nothing like the movie sales lists described in

column 20, lines 43-66 of Hendricks. Therefore, there would be no reason to apply the placement process of the movies of Hendricks to the advertising message (note “message” is singular) of claims 15 and 18. Furthermore, the process described in column 20, lines 43-66 is a response to low orders of certain movies. This response appears to be for dealing with excess inventory or some other purpose unrelated to an iterative optimization of matching an advertising message with a targeted potential customer based on data, as is recited in claims 15 (previously presented) and 18 (previously presented). Therefore, Hendricks additionally fails to teach or suggest the invention of claim 19 (previously presented).

Claim 118 is considered to be allowable for the same reasons as claim 18, as described above, and for further additional recitation that the advertising plan is iteratively modified “using at least one of an exposure valuation index, an audience valuation index and an exposure index.” A word search applied to Hendricks turns up no derivative of the word “exposure.” Similarly, there is no reference to “forecast” in Hendricks. Utilizing exposure value and exposure recency indexes among other indexes and forecasting or optimizing based on these indexes are features of the present invention recited in claims 15 (previously presented) and 118 (previously presented). These features are not taught by Hendricks with reference to creating a plan and scheduling a distribution of an advertising message. Therefore, claim 118 (previously presented) is additionally considered to be allowable over Hendricks and Wachob.

Applicant respectfully requests that the obviousness rejection of claims 15-22, 96, 97, and 118 be withdrawn.

## CONCLUSION

Given the foregoing shortcomings of Hendricks and Wachob, it is respectfully submitted that the references fail to disclose or suggest the invention of claims 15-22, 96, 97, and 118-120. Accordingly, withdrawal of the rejections under 35 U.S.C. §101 and §103(a) is respectfully requested.

Applicant has made an earnest effort to place their application in proper form and to distinguish their claimed invention from the applied prior art. In view of the foregoing remarks, it is respectfully submitted that the present claims describe a program product comprising an advertising plan optimization mechanism that meets the requirements of patentability. Applicant therefore respectfully requests that a timely Notice of Allowance be issued in this case.

If any fees, including extension of time fees or additional claims fees, are due as a result of this response, please charge Deposit Account No. 19-0513. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response. The Examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

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